

Message Text

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P 201515Z AUG 76

FM SECSTATE WASHDC

TO CINC USAREUR

C O N F I D E N T I A L STATE 206882

EXDIS, MIL ADDEE HANDLE AS SPECAT EXCLUSIVE

FOLLOWING REPEAT STATE 206882 ACTION BONN INFO USBERLIN
AUG 19.

QUOTE C O N F I D E N T I A L STATE 206882

EXDIS

E.O. 11652: XGDS 2 AND 3

TAGS: PFOR, GW, WB, PINR

SUBJECT: ACCESS BY BDC DEFENSE ATTORNEYS TO G-10
INFORMATION

REF: JULY 1 INTERAGENCY MEETING AT EMBASSY BONN;
STATE 101111 DTG 270038Z APRIL 76; BONN 7225 DTG 300843Z
APRIL 76

1. ON JULY 29, THE US ATTORNEY'S OFFICE SENT LETTERS TO THE
CONFIDENTIAL

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INDIVIDUAL DEFENSE COUNSEL IN THE BDC V RUMSFELD CASE,
REQUESTING THEY SIGN ATTACHED SECRECY AGREEMENTS AS A
PREREQUISITE TO THEIR BEING GRANTED ACCESS TO
CLASSIFIED INFORMATION. COPIES OF THE LETTERS WERE

MAILED APO BY JUSTICE TO EMBASSY LEGAL ADVISER AUGUST 6.

2. SINCE CERTAIN OF THE DEFENSE COUNSEL HAVE NOW SIGNED THE SECRECY AGREEMENT AND WILL BE GIVEN ACCESS TO G-10 MATERIALS, EMBASSY SHOULD SO INFORM FRG AUTHORITIES IN LOW KEY MANNER, INDICATING THAT OTHER DEFENSE COUNSEL WILL ALSO BE GRANTED ACCESS AFTER THEY HAVE SIGNED. WE WOULD THINK THE SAME CHANNELS USED IN THE SOCIALIST WORKERS PARTY MATTER (BONN 7225) WOULD BE APPROPRIATE.

3. EMBASSY SHOULD MAKE FOLLOWING POINTS:

-- IN THE BDC V RUMSFELD CASE, THE PLAINTIFFS ARE NOT ONLY SEEKING REDRESS AGAINST THE USG FOR ALLEGED ILLEGAL ACTS, BUT ALSO MONEY DAMAGES FROM FIVE INDIVIDUAL DEFENDANTS WHO WERE USG OFFICIALS INVOLVED IN US INTELLIGENCE ACTIVITIES IN EUROPE;

-- UNDER THE AMERICAN LEGAL SYSTEM IT IS CUSTOMARY FOR MULTIPLE DEFENDANTS EACH TO HAVE HIS OWN LAWYER TO AVOID POSSIBLE CONFLICTS OF INTEREST. THEREFORE THE US DEPARTMENT OF JUSTICE HAS AUTHORIZED THE RETAINING AT

USG EXPENSE OF SEPARATE DEFENSE COUNSEL FOR EACH DEFENDANT BEING SUED IN HIS INDIVIDUAL CAPACITY WHOSE DEFENSE IT WOULD OTHERWISE CONDUCT ITSELF;

-- AS COUNSEL FOR THE INDIVIDUALLY SUED DEFENDANTS WILL BE DEFENDING UNITED STATES GOVERNMENTAL OFFICIALS FOR ACTS THAT WERE WITHIN THE SCOPE OF THEIR OFFICIAL DUTIES, THEY WILL, IN A VERY REAL SENSE, BE PROTECTING THE INTERESTS OF THE UNITED STATES;

-- IN ORDER TO PERMIT ADEQUATE DEFENSE OF THESE USG OFFICIALS, IT IS NECESSARY TO ALLOW THE INDIVIDUAL DEFENDANTS' LAWYERS ACCESS TO CLASSIFIED FILES RELEVANT TO THE CASE, INCLUDING G-10 SOURCE INFORMATION CONFIDENTIAL

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PROVIDED BY THE FRG. ONLY THOSE LAWYERS WHO HOLD APPROPRIATE SECURITY CLEARANCES AND WHO HAVE EXECUTED SECRECY AGREEMENTS HAVE BEEN OR WILL BE GRANTED SUCH ACCESS;

-- UNDER THE SECRECY AGREEMENT, COUNSEL ARE PROHIBITED FROM DISCLOSING CLASSIFIED INFORMATION TO ANY UNAUTHORIZED PERSON. THIS WOULD BAR THEIR USE OF CLASSIFIED MATERIAL IN OPEN COURT WITHOUT PRIOR USG APPROVAL. WE WOULD SEEK YOUR AUTHORIZATION BEFORE APPROVING ANY SUCH USE;

-- DEFENSE COUNSEL ARE AUTHORIZED TO PROVIDE CLASSIFIED

INFORMATION TO THE JUDGE EX PARTE FOR HIS CONSIDERATION
IN CAMERA PROVIDED THE USG IS INFORMED. A FEDERAL
JUDGE IS A US OFFICIAL AUTHORIZED TO RECEIVE CLASSIFIED
INFORMATION. AS WE MENTIONED IN CONNECTION WITH THE
SOCIALIST WORKERS PARTY CASE, CLASSIFIED DOCUMENTS ARE
ROUTINELY MADE AVAILABLE TO FEDERAL JUDGES FOR IN
CAMERA EXAMINATION, AND THE CONFIDENTIALITY OF SUCH
INFORMATION HAS BEEN FULLY RESPECTED. WE WOULD KEEP
YOU FULLY INFORMED OF ANY CLASSIFIED G-10 SOURCE
INFORMATION WHICH MIGHT BE USED IN THIS FASHION.

4. FYI. GENERAL AARON'S COUNSEL HAVE REQUESTED FURTHER

CLARIFICATION BEFORE DECIDING WHETHER TO SIGN SECRECY
AGREEMENT, AND GENERAL FREDERICK DAVISON'S COUNSEL
HAS INDICATED HE IS ALSO HOLDING OFF FOR THE MOMENT
(LETTERS POUCHED EMBASSY AND USBERLIN). COUNSEL
FOR REMAINING TWO INDIVIDUAL DEFENDANTS HAVE NOT YET
FORMALLY RESPONDED REGARDING THE SECRECY AGREEMENT.
END FYI. ROBINSON
UNQUOTE ROBINSON

CONFIDENTIAL

<< END OF DOCUMENT >>

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TAGS: PFOR, PINR, PGOV, GE, WB, US, JUS, BDC-BERLIN DEMOCRATIC CLUB, (RUMSFELD, DONALD)
To: CINC USAREUR
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